

**Age Action Ireland**  
**Protecting Older Adults**  
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**Elder Abuse: Legal Issues Explored**

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# Overview

Capacity to make decisions

Enduring Powers of Attorney

Wills

Joint Accounts

Gifts/Future Needs/Improvident bargain

Health Care Decisions/Advance Care Decisions

Administration of Estates

Conclusion

# Capacity/Scheme of Mental Capacity Bill 2008

- Presumption of Capacity
- Functional Approach – *time and issue specific*
- Definition – *statutory/common law*
- Who can decide – *existing/proposed*

# Scheme of the Mental Capacity Bill 2008

## Guiding Principles

- Presumption of capacity
- Law on capacity should be enabling not restrictive –no intervention unless necessary
- Not treated as unable to make decision unless all practical steps to assist
- Any act or decision -least restrictive of the person's rights and freedom of action

# Scheme of the Mental Capacity Bill 2008

## Guiding Principles *continued*

- Due regard to right to dignity, bodily integrity, privacy and autonomy
- Account must be taken of person's past and present wishes where ascertainable
- Account taken of views of other persons with interest in welfare where known
- Any act or decision must be made in the best interests of the person

## Who can decide – existing/proposed

- Ward of Court/Guardianship
- Enduring Power of Attorney
- Doctrine of Necessity
- Informal Decision making

# Enduring Power of Attorney (EPA)

- How created
- Selection of attorney
- What authority is given – *general or limited*
- Personal care decisions/personal welfare decisions
- Registration

## Enduring Power of Attorney (continued)

- Safeguards on registration
- Misuse/Abuse
- Fiduciary obligations – *attorney/financial institution*
- Gifts and remuneration
- Best interest principle/General principle



# Wills

- Whose instructions/undue influence
- Requirements
- Testamentary Capacity
- Attendance at hospital/residential setting
- Right to privacy and autonomy

# Joint Accounts

- Intention of transferring in to joint names
  - Convenience
  - Is joint account an asset in the estate of a deceased person
- Is there an intention to make a gift either at date of opening of joint account or at date of death
- Even if no intention to benefit do legal presumptions apply

# Gifts/Future Needs/Improvident Bargain

- Capacity to make gift
- Undue influence/independent advice
- Who is solicitor acting for
- All relevant circumstances/changed circumstances
- Provision for future needs

# Health Care Decisions

- Informed consent – *valid consent*
- Adult who lacks capacity
- Next of Kin
- Doctrine of Necessity
- Advance Care Directives – *end of life decisions*

# Administration of Estates

Older person is a:

- personal representative(executor/administrator)
- beneficiary of an estate
- surviving spouse

# Conclusion

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